

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

VS.

CR. NO. 20-0639 JB

JOHNNY BLACK,

Defendant.

Transcript of Sentence Proceedings before
The Honorable James O. Browning, United States
District Judge, Albuquerque, Bernalillo County,
New Mexico, commencing on July 17, 2020.

For the Government: Mr. Nicholas Marshall

For the Defendant: Ms. Margaret Katze

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1 THE COURT: All right. Well, I appreciate
2 the marshals helping us get it set up, Ms. Wild
3 getting it set up. We had Braden and everybody from
4 IT. So I appreciate everybody working hard to make
5 this happen. I know that both the defendant and the
6 victim's family are here. So if at any point this
7 isn't working, just say so; we'll try to make it
8 work. But everybody has worked real hard to try to
9 make it work for everybody. So I appreciate
10 everybody's cooperation.

11 All right. The Court will call United
12 States of America versus Johnny C. Black, Criminal
13 Matter No. 20-CR-0639 JB.

14 If counsel will enter their appearances for
15 the Government.

16 MR. MARSHALL: Good morning, Your Honor.
17 Nicholas Marshall for the United States.

18 THE COURT: Mr. Marshall, good morning to
19 you.

20 And for the defendant.

21 MS. KATZE: Margaret Katze for Mr. Black.

22 THE COURT: Ms. Katze, good morning to you.
23 Mr. Black, good morning to you.

24 THE DEFENDANT: Good morning, Your Honor.

25 THE COURT: Mr. Black, Probation has

1 prepared some documents in your matter. There is a
2 presentence report and then there is an addendum,
3 which I think basically contains another presentence
4 report that was issued on July 1st, and then there is
5 a second addendum which was released yesterday. Have
6 you reviewed those two PSRs and the two addendums
7 that Probation has prepared in your matter, Mr.
8 Black?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And Ms. Katze, have you
11 reviewed with Mr. Black the two presentence reports
12 and the two addendums?

13 MS. KATZE: Yes, Your Honor, I went over
14 all of those with Mr. Black.

15 THE COURT: And we agreed that we were
16 going to keep the restitution if everybody is
17 agreeable. I think the Government will make a
18 representation at this time that restitution could
19 not be determined 10 days in advance of this hearing
20 with accuracy; is that correct, Mr. Marshall?

21 MR. MARSHALL: Yes, Your Honor.

22 THE COURT: And I think Probation was going
23 to make the recommendation that restitution could not
24 be determined 10 days in advance of this hearing?

25 PROBATION OFFICER: Yes, Your Honor.

1 THE COURT: And we received some material
2 yesterday, and Ms. Katze has indicated that she's not
3 prepared to address restitution; is that correct, Ms.
4 Katze?

5 MS. KATZE: That is correct.

6 THE COURT: So I will ask Ms. Wright --
7 we'll put restitution aside today, and I will ask
8 Ms. Wright to set a hearing within 90 days of today's
9 hearing with another date sometime within that 90
10 days to finalize restitution.

11 With that resolution of restitution, Ms.
12 Katze, I know the big issue was the obstruction of
13 justice. It looked like it gotten taken care of,
14 everybody came to an agreement on that. Do you have
15 any other issues or disputes with the PSRs or the
16 addendums?

17 MS. KATZE: Your Honor, I do. And I could
18 address those as part of my sentencing argument. Can
19 I just clarify something with respect to the
20 restitution?

21 THE COURT: Certainly.

22 MS. KATZE: Will there be a formal request
23 for restitution filed either by Probation or the
24 Government? I know Probation in the addendum
25 indicates that the family was making a request and

1 attached a very rough thing. And said that they were
2 awaiting more receipts, et cetera. I would like to
3 respond in writing, and so I want to know, like, I
4 guess I'd like an indication of whether there is
5 going to be something more concrete, a specific
6 request filed that I will respond to.

7 THE COURT: Do you know what they're going
8 to do?

9 PROBATION OFFICER: Your Honor, I have been
10 in contact with the family, and the family will be
11 forwarding receipts, so I can make more of a more
12 concrete dollar amount in terms of -- and kind of
13 justify what they're asking for.

14 THE COURT: Okay.

15 PROBATION OFFICER: So I can work on that
16 within that window and then submit something to the
17 Court.

18 THE COURT: So I guess from a procedural
19 standpoint, so that Ms. Katze has something to shoot
20 at, you'll work to get more documentation from the
21 victims or the victim's family, and you will prepare
22 another document. And then, I guess, Ms. Katze, at
23 that point I'd encourage you to maybe work with Mr.
24 Marshall, and Probation to see if y'all can agree.
25 And if you can't agree, then I think that's the thing

1 for you to shoot at. Does that make sense?

2 MS. KATZE: That sounds fine. So first
3 we'll get something from Probation. Then depending
4 what that is, if it looks like it's something that
5 Mr. Marshall and I can resolve, we can do that and
6 file that with the Court. If not, I will file
7 something explaining my opposition to that.

8 THE COURT: Okay. Does that sound good to
9 you?

10 MS. KATZE: That sounds fine.

11 THE COURT: All right. So tell me -- I'll
12 leave it to you how you want to handle your other
13 objections. I know we've got the guideline set;
14 correct? Now, there is no disagreement on the
15 guideline range?

16 MS. KATZE: Your Honor, I think that's
17 correct.

18 THE COURT: Okay.

19 MS. KATZE: This is what I would suggest:
20 I understand that there are two family members that
21 want to address the Court. Perhaps we could have
22 them come in first and address the Court, and then
23 either Mr. Marshall or I can make our argument, and
24 Mr. Black has a statement he'd like to make. I can
25 address everything at one time. Would that make

1 sense?

2 THE COURT: Okay. Let me then confirm so
3 that everybody understands or we're in agreement. So
4 there is not any dispute on the guideline sentence.
5 As to Count 1 the guideline sentence is the
6 statutorily required sentence of seven years, which
7 will run consecutive to any sentence imposed.

8 As to Count 2, the offense level is 27, and
9 the criminal history category is 5, establishing a
10 guideline imprisonment range of 120 to 150 months.

11 Therefore, the total guideline range is 204
12 to 234 months. However, under Rule 11(c)(1)(C) of
13 the Federal Rules of Criminal Procedure, the parties
14 have presented the Court with a plea agreement which
15 includes a specific sentence of 154 to 171 months.

16 Have I correctly stated the guideline and
17 the proposed range that the parties have asked the
18 Court to adopt, Ms. Katze?

19 MS. KATZE: I believe so.

20 THE COURT: Is the way that Ms. Katze is
21 proposing to proceed acceptable to you, Mr. Marshall?

22 MR. MARSHALL: That's fine, Your Honor.

23 THE COURT: All right. So why don't we
24 then, if you know, which --

25 MS. KATZE: I'm sorry. I just have one

1 objection before they speak I'll just put on the
2 record. I had requested, and Mr. Marshall, he
3 indicated there would be two family members that
4 wanted to speak. And I requested that he please
5 provide me with their names and date of birth, dates
6 of birth. And he responded: No, this has not ever
7 been done as to my knowledge. Your Honor, I think we
8 are entitled to that.

9 Mr. Black, though he's pled guilty,
10 continues to have Fifth Amendment rights, including
11 his due process right at sentencing. And the
12 information that this Court uses for purposes of
13 sentencing has to be reliable. And so anything about
14 people who are speaking, anything about their
15 background, I believe, would be relevant. It could
16 be relevant to credibility, to bias. And so I think
17 that that's a reasonable request that we have that
18 information.

19 THE COURT: Well, do you have any problem
20 providing it right now, and we will see how we're
21 going to proceed? Are you ready to present --

22 MR. MARSHALL: I do, Your Honor. I don't
23 think that the personal identifying information is
24 something that needs to be turned over regarding --
25 like the date of birth specifically. I have no

1 problem turning over the names, and I eventually did
2 turn over the names to defense counsel, I believe it
3 was yesterday, about who was going to be speaking.
4 The names I thought would be relevant and maybe even
5 their relationship to the victim. However, personal
6 identifying information is something that could have
7 been redacted in discovery and is not something that
8 is necessarily relevant. These individuals weren't
9 witnesses to the case. This is not Brady
10 information. They're here merely under -- to make a
11 victim impact statement under the Crime Victims Act.
12 They are afforded certain rights and protections
13 under that act, including rights from harassment, and
14 protections from harassment. And so I don't feel
15 that providing defense counsel with personal
16 identifying information is something that was
17 necessary. This is not something they're going to
18 even get to do a cross-examination of these
19 witnesses. They're just merely to give a statement
20 about how the crimes of Mr. Black have impacted their
21 lives. So that their names and the relationship to
22 the victim would be relevant. Any other information
23 I don't think, Your Honor, would be relevant, and
24 could borderline on the harassment of being protected
25 under the Crimes Victims Act.

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1 THE COURT: All right. Ms. Katze.

2 MS. KATZE: Your Honor, I am not sure why
3 the Government concedes that their names are relevant
4 but their date of birth isn't relevant. The reason
5 for the names and the dates of birth is so that we
6 could possibly run a background check or find out
7 something about them. Not to harass them, but
8 because they're being offered as -- I absolutely
9 understand what their role is. They're speaking
10 under the Victim Witness Act, I understand that. But
11 their statement is something being presented on
12 behalf of the Government to impact the Court with
13 respect to the eventual sentence. And anything that
14 the Court is presented with needs to be reliable.
15 And my position is that unless we can run just even a
16 cursory background check, I don't have anything --
17 I'm not going to cross-examine them, but if there was
18 something about their background that indicated they
19 weren't reliable or credible, I think that would be
20 important for the Court to know. If there was
21 something as far as their ability to proceed and
22 understand things, if there is a particular bias -- I
23 mean, obviously, there is a bias. They're the family
24 of the deceased woman, I understand that, but --

25 THE COURT: Well, let's do this: I tend

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1 to -- this is what I tend to think, and I've not had
2 this situation before, so this is off the top of my
3 head -- I think the Government should probably give
4 names in advance so that they know who is going to be
5 speaking here today.

6 In the future, if there is something that
7 is confusing about the person, for example, if there
8 is a John Smith, Sr., and a John Smith, Jr., maybe
9 rough ages, you know, this is the dad, this is the
10 son, something like that. I guess I tend not to
11 think date of birth, Social Security numbers, that
12 sort of stuff needs or should be disclosed. So I
13 don't know if that's helpful more down the road than
14 it is today. But if you -- after you hear these
15 people, if you decide you need to have an
16 investigator or somebody to run some more
17 information, then we'll figure out how to proceed.
18 But maybe that will give you some guidance for down
19 the road, and kind of what I think is probably fair.
20 Just make sure that the defense lawyer knows what
21 they're going to see without disclosing maybe
22 detailed information.

23 Does that work for you this morning, Ms.
24 Katze?

25 MS. KATZE: Your Honor, if that's what we

1 have to go with, then we're going to go with that.

2 And with all due respect, Mr. Marshall did
3 not tell me the names. He responded to your
4 courtroom deputy when she said she had to have the
5 names to know who was going to be in the courthouse
6 to let security know. So, yes, at the end of the day
7 I got the names because I was copied in the email.
8 But in response to my request I read you, the
9 response I got was, "No." So I guess that I do have
10 the names now, yes.

11 THE COURT: Well, in the future, I think
12 names probably should be disclosed -- not probably,
13 names should be disclosed -- and enough information
14 if the defense lawyer asked for it, so that they know
15 roughly the age or something so that there is not any
16 confusion. And like I said, if we get along and you
17 feel like you need a break or something to have an
18 investigator run something, let me know.

19 MS. KATZE: Thank you.

20 THE COURT: All right. Anything else then,
21 Ms. Katze?

22 MS. KATZE: I just realized I wanted to
23 make that objection prior to them to speaking.

24 THE COURT: Okay. That's fine. Anything
25 else, then, before Mr. Marshall has the first

1 victim's family or statement on behalf of the family,
2 Mr. Marshall?

3 MR. MARSHALL: No, Your Honor.

4 THE COURT: All right. Do you want to ask
5 the first one to come to the courtroom, and -- all
6 right. Come up on up and state your name.

7 MR. MORA: Thank you, Your Honor. Good
8 morning everyone. My name is Alan Mora. I'm the
9 oldest brother of Jessica Mora.

10 THE COURT: All right. Mr. Mora, you may
11 proceed.

12 MR. MORA: I wrote a little something here,
13 Your Honor. My name is Alan Mora, of course, the
14 oldest brother of Jessica. I'm writing this on
15 behalf of my mother and father, who are both
16 deceased, and my brother, Tim Mora.

17 Your Honor, Jessica was 13 years old then,
18 and I was -- she was 13 years younger than me and my
19 brother. She was 8 years younger than my brother.
20 When she was born she was a sparkle of our eyes. Our
21 mother loved her boys but finally had a girl. When
22 she brought her home, I begged my parents to stay in
23 my room -- her to stay in my room. They finally gave
24 in and put her in my room, where I woke up as a
25 13-year-old to feed her, change her, et cetera.

1 Jessica was the apple of my eye. At the age of 10
2 she lost her mother to cancer. At this time the boys
3 and her father stepped in and brought her up to be a
4 beautiful young lady. Her father taught her how to
5 shave her legs, comb her hair, et cetera. As she
6 grew older, my brother would comb her long beautiful
7 hair longer than my father because I couldn't do it,
8 I can't comb hair.

9 Jessica was always with one, if not all
10 three of us always. Jessica grew into a teenager and
11 adult with her boys by her side. As a young girl,
12 she became the aunt of a niece and two nephews who
13 were her heart and soul. Jessica always had time for
14 taking them on trips, fishing and sporting events, et
15 cetera. Jessica loved being around her family,
16 cooking, fishing, watching sports, or whatever we
17 came up with. Jessica then lost her father at a
18 young age also, and assured the boys and the family
19 she would handle everything, which she did without
20 hesitation.

21 As you could see, Your Honor, Jessica was a
22 very beautiful and exceptional woman. I could go on
23 and on about her. But the bottom line is she should
24 not have been taken away from us in the brutal way
25 she was. Your Honor, I'm respectfully asking that --

1 I'm respectfully asking you that the people who are
2 responsible for her horrific death be held to the
3 harshest penalty that can be given.

4 Thank you, Your Honor, for your
5 consideration. Respectfully me, Alan Mora, Retired
6 Police Lieutenant, over 30 years; Tim Mora, my
7 brother, Retired Corrections Sergeant, 20 years; and
8 the entire Mora family.

9 THE COURT: Thank you, Mr. Mora.

10 MR. MORA: Thank you.

11 THE COURT: All right. Mr. Marshall, do
12 you have the next statement on behalf of the victim's
13 family?

14 MR. MARSHALL: Yes, Your Honor. I'll go
15 get them.

16 MS. MORA: Can you hear me?

17 THE COURT: Yes, do you want to identify
18 yourself?

19 MS. MORA: Yes, I'm Nicole Mora.

20 THE COURT: All right. Ms. Mora.

21 MS. MORA: Your Honor, my name is Nicole
22 Mora. I'm her only niece and I have cerebral palsy.
23 When I was born we were 10 years apart. My aunt
24 raised me as a child with a disability. I was with
25 her all the time. We went fishing, swimming,

1 shopping. And Jessica took me to New York, #1 on my
2 bucket list. We would take medical classes and help
3 each other. Aunt Jessica was going to be my
4 caregiver when my mom or dad passes. My aunt was the
5 best aunt you could ever have. She is like my
6 sister, my role model, my best friend, and my mother.
7 There is no person like her.

8 I miss her so much. I have sleepless
9 nights, and I wake up and she's not there. I'll
10 never see her beautiful face, her beautiful smile,
11 and her voice again. She did not deserve to die this
12 horrific death. She deserves -- sorry. Your Honor,
13 this defendant should never walk on the streets
14 again. Please, Your Honor, I beg you to give him the
15 maximum sentence under the law.

16 Thank you, Your Honor.

17 THE COURT: Thank you, Ms. Mora.

18 All right. Mr. Marshall, does the United
19 States have further people it wishes to address the
20 Court?

21 MR. MARSHALL: No, Your Honor.

22 THE COURT: All right. Thank you, Mr.
23 Marshall.

24 How did you want to proceed next, Ms.
25 Katze?

1 MS. KATZE: Your Honor, Mr. Marshall can
2 make his statement, then I can go, and my client can
3 speak, if that's --

4 THE COURT: Okay.

5 MS. KATZE: -- okay.

6 THE COURT: All right. Mr. Marshall, do
7 you want to make your statement?

8 MR. MARSHALL: Yes, Your Honor. Does the
9 Court have a preference whether the podium or counsel
10 table?

11 THE COURT: It doesn't matter, just as long
12 as Ms. Bean can hear you. That's all that's
13 important.

14 Do you move for the third level adjustment
15 downward for acceptance of responsibility?

16 MR. MARSHALL: Yes, Your Honor.

17 THE COURT: And I assume there is no
18 objection to that motion, Ms. Katze.

19 MS. KATZE: No objection.

20 THE COURT: Do you have a written motion
21 and order? Do you want to supply one after the
22 hearing?

23 MR. MARSHALL: I'll have to supply one,
24 Your Honor. I must have left it at the office. I'm
25 sorry.

1 THE COURT: All right. Go ahead, Mr.
2 Marshall.

3 MR. MARSHALL: And, Your Honor, we're here
4 today, obviously, on the sentencing for Mr. Black.
5 And the United States recognizes the assistance that
6 Mr. Black has provided. And you can see that
7 acceptance as well as the assistance has been
8 indicated, and it's part of reasons for why the
9 Government entered into this 11(c)(1)(C) with the
10 defendant.

11 THE COURT: Yeah. And I guess that was one
12 thing I probably should have asked both you and Ms.
13 Katze, is if in your remarks if you'll justify -- I
14 know y'all are differing about where within your
15 range, but if you could also justify why a variance
16 is appropriate here to the range that y'all have
17 agreed to in your Rule 11(c)(1)(C) agreement.

18 MR. MARSHALL: Yes, Your Honor.

19 THE COURT: So thank you for doing that.

20 MR. MARSHALL: And there is a bit of a
21 variance, as the Court has noted. The defendant is
22 receiving about a 50 to 60 month benefit as part of
23 the (c)(1)(C) agreement.

24 Mr. Black, after the plea agreement, met
25 with law enforcement as part of the plea addendum,

1 and as part of agreement that he would then help
2 provide assistance in locating the remains of Jessica
3 Mora. He did so. He gave an approximation of where
4 the toolbox that contained the body was going to be
5 found. And law enforcement was able to go out
6 approximately -- there was two or three days after
7 the information was gathered and was able to recover
8 the body and the remains. And it was in the
9 approximate location that Mr. Black had provided.

10 And so that evidence that was collected is
11 now in the process of being examined by the New
12 Mexico Office of Medical Investigator. And then will
13 go on to further forensic analysis, and hopefully,
14 aid the investigation into this matter, and hopefully
15 future prosecution of the other offenders that were
16 participating in these acts with Mr. Black.

17 The other thing he's done for the family is
18 give a little bit of peace of mind. For a long time
19 the family was unsure of -- at first, where she was,
20 if she was still alive and then later where her
21 remains were, and had wanted to have proper services
22 for her. And what this will do is now enable them to
23 be able to have proper funeral services once they
24 receive the final remains from the Office Medical
25 Investigations, that they can finally have the

1 funeral service that has been a long time coming,
2 almost two and a half years after the death of Ms.
3 Mora they will finally be able to put her remains to
4 rest. So for those reasons the parties entered into
5 an agreement, and that is the reason for the
6 variance.

7 The net benefit of the cooperation has been
8 included in that agreement and it has been mutually
9 beneficial to both parties. That said, Your Honor,
10 that doesn't necessarily mean, the United States has
11 not been asking for the low end of the agreement in
12 that range. We're actually asking for the high end.
13 We're asking for the full 171 months. Much of this
14 is already laid out in the United States sentencing
15 memorandum, but the nature of this crime was it was a
16 very heinous act. Even though the United States was
17 only able to prove that Mr. Black participated after
18 the fact, and participated, what happened after the
19 fact is -- continued to be heinous. And there was
20 evidence that the defendant was aware of what was
21 going on even if he wasn't participating in the
22 murder of Ms. Mora, as he arrived with the tarp and
23 the plastic shortly after her death. Mr. Black
24 participated in dismembering the body. They tried to
25 burn it, as noted, out near Velarde, New Mexico, in a

1 remote location, but became afraid that the smoke was
2 going to be -- someone was going to find them. So
3 they collected what was left of her remains at that
4 point; put them -- later put them in a toolbox,
5 covered it with concrete, and then weeks to months
6 later they buried it out by Rio Chama, which was
7 eventually then -- the location was provided to law
8 enforcement and the remains were eventually recovered
9 and are now currently at OMI.

10 Mr. Black was integral to the coverup. He
11 was a key member of the group that was both
12 dismembering the body but burning the body and
13 attempting to hide other evidence related to her
14 kidnapping and murder. He was there when they were
15 burning different articles of clothing, bedding,
16 anything that they thought that could have been
17 burned that had evidence attached to it. He was part
18 of the group that was putting her remains in the
19 toolbox, and dismembering her when they went to go
20 burn her body. And so this is not someone who played
21 a minor role afterwards. As part of the coverup he
22 was a major player when it comes to the coverup of
23 the investigation into her -- into Jessica Mora's
24 kidnapping and murder.

25 And after they had killed Ms. Mora, there

1 appears, almost like a struggle or a hold, the
2 defendant's girlfriend at the time, Crystal Ramos --
3 who was also a participant, she was a participant in
4 the kidnapping and murder, as well as the coverup --
5 she was up in the Denver, Colorado area, and when she
6 was stopped by officers, she pulled a gun on the
7 officers and was shot to death by police officers
8 outside of Denver, Colorado.

9 After that occurred, it appears that Mr.
10 Black was upset with law enforcement, as there are
11 now multiple accounts that he was either shooting at
12 or brandishing firearms at law enforcement officers
13 after this occurred. There was a state criminal
14 complaint for shooting at officers, as well as Count
15 1 in this case.

16 And what that does is present a dangerous
17 situation, because both of those times defendant was
18 doing that in very public places. These were on
19 public roadways in and around the Espanola area.
20 This situation where he was brandishing and shooting
21 a firearm at an officer was right there by Riverside
22 Drive in Santa Cruz, which is right in the heart of
23 Espanola. And so that it was in the middle -- it was
24 during the daytime. And on the dash cam video you
25 see multiple other vehicles driving on those streets.

1 So not only was he endangering the lives of the
2 people in his vehicle, as well as the officer's
3 vehicle, he was also endangering the lives of people
4 in Espanola and the Espanola area by when he was
5 starting to shoot and do these actions. So what he
6 did was present another dangerous situation.

7 So the nature of his conduct, Your Honor,
8 was obviously dangerous. The act involving Ms. Mora
9 is a very heinous act. And for those reasons the
10 defendant deserves the high end of the guideline
11 range.

12 Additionally, when you look at the
13 defendant's history and characteristics, there is a
14 reason that those also indicate that he deserves the
15 high end of the guideline range. He's a repeat
16 felon. And yet in this case -- and at the time of
17 his arrest he was running around with firearms. When
18 he was arrested, he was found with a gun on him that
19 was different than the firearm that was used in the
20 underlying case. There was a difference in caliber
21 of the weapon, from a 40 caliber to a nine
22 millimeter. So it appears that he was using at least
23 multiple firearms as a repeat felon in committing
24 crimes in between Espanola and the Rio Rancho/Santa
25 Ana area.

1 The defendant self-reported in his PSR that
2 he was a meth abuser, an alcohol abuser, and
3 attributed some of this to that. But that also
4 presents a dangerous situation. When someone is
5 addicted to substances and is acting out, it creates
6 a much more dangerous situation for the other
7 individuals in the community.

8 You can also look at the lengthy criminal
9 history that was provided in the PSR, that the
10 defendant has an extensive criminal history,
11 including multiple crimes that were committed while
12 he was on supervision or awaiting adjudication on the
13 underlying offense, and that he was still continuing
14 to pick up new crimes. So that goes to his history
15 and characteristics, that he is a dangerous
16 individual that should not be given the benefit of
17 the low end of the sentencing range, and instead
18 should be given the high end of the sentencing range.

19 And, Your Honor, for these reasons we're
20 asking that he receive the sentence of 171 months
21 that is the high end of the sentencing range.

22 We're asking for the maximum amount of
23 supervised release.

24 And the parties are going to, I believe,
25 try to reach an agreement on the restitution. And if

1 not, we'll be back before the Court to try to come to
2 some sort of restitution agreement. I do believe
3 under 3663 that this is a crime eligible for
4 restitution. And we'll see if the parties are able
5 to agree on that amount as the information regarding
6 restitution came in late. And so we will hopefully
7 be able to resolve it. If not, we'll be back before
8 the Court.

9 THE COURT: All right. Thank you, Mr.
10 Marshall.

11 And Ms. Katze, we're turning back to you
12 now.

13 MS. KATZE: Thank you.

14 THE COURT: Ms. Katze.

15 MS. KATZE: I'll come up here. Your Honor.
16 First -- well, I just want to make clear this is not
17 a sentencing about a murder. Mr. Black is not
18 accused of murdering Jessica Mora. The Government
19 doesn't believe he murdered her. All their
20 witnesses, in what I received heavily redacted
21 statements all say that he was not involved in the
22 murder. And I think -- I get that -- I completely
23 understand that it's a tragic murder. But it's an
24 inappropriate way to sensationalize the sentencing on
25 an accessory after the fact. So with respect to

1 that, just quickly, as far as justification for the
2 plea, I'll actually kind of hit on those through my
3 argument. But I just wanted to remind the Court that
4 this is not a murder sentencing.

5 So my first type of objection that I want
6 to bring to the Court's attention, I've written in my
7 objections that it appeared to me that Probation had
8 received some discovery I had not. And I referred to
9 a specific paragraph in the presentence report where
10 Probation lists the full names of the apparent
11 murderers. I looked at my discovery that I got from
12 the Government, and it's very, very redacted. And
13 the only thing I did see on a particular page were
14 those last names. I asked Probation where she got it
15 from. I asked the Government, and the Government
16 said -- I said, Obviously, she got some other
17 information I didn't. I have that nowhere. Can you
18 point me to the discovery where it is. And Mr.
19 Marshall pointed me to a particular page, the page
20 that I referred to that had all the witnesses' last
21 names on it, and it didn't have the full names. So
22 he sent me another copy of all the discovery showing
23 me, saying: This is what I sent to Probation. And
24 it was the same discovery he had sent me. So I still
25 couldn't understand how Probation got these full

1 names. So I talked to Probation again, and she said
2 she had spoken to the case agent, the case agent had
3 given her the names. So, obviously, the case agent
4 has spoken to her about this case and about matters
5 that affect Johnny Black and his sentencing.

6 So I request -- after finding out what
7 actually happened, I wrote to the probation officer
8 and said the United States Probation Office got the
9 information in paragraph 42 from talking to the case
10 agent. He gave her those individuals' full names,
11 information I am not given. I would like to know
12 what else he told her. I am concerned that she
13 received information I was not provided.

14 And the Government responded and said,
15 first of all, that as far as matching up the names, I
16 could ask my client about those names, but said that
17 he was not turning over information regarding an
18 ongoing investigation.

19 Here are my concerns: First of all, the
20 Government has the burden. It is not a substitute
21 for the Government's burden to tell me to ask my
22 client. It's never a substitute in a criminal case
23 to say: Well, ask your client what happened. We
24 don't have to turn over information. The Government
25 has the burden of proof, and the Government has the

1 discovery obligation.

2 And so here's my concern: I can see what's
3 in the presentence report. I can respond to it. I
4 can dispute it. I don't know what the probation
5 officer has learned subrosa. While it's not in the
6 probation report, might be in a recommendation she
7 either writes or discusses with you.

8 THE COURT: No, well, let me just sort of
9 assure you on that. The only thing I have in this
10 matter that's independent -- and I don't even think
11 that Probation would care if I showed it -- but I
12 have a confidential sentencing memorandum. But it
13 simply -- as it always does -- it gives me the
14 offense level, the criminal history, the statutory
15 provisions, the guideline provisions, and then their
16 recommended sentence. And then they give the
17 justification for their recommendation to me as the
18 sentence, and then give me a statement about
19 voluntary surrender. So it's only a page, which is
20 just sort of the typical summary of those three
21 categories, and then the recommendation, and then
22 discussions about voluntary surrender. And that's
23 it. The rest is a script. So on that score, and I
24 have not talked to Probation at all until we got here
25 this morning. They wanted to talk to me about

1 restitution. You saw me sort of say: Talk to -- so
2 I can assure you that I don't have any information
3 that's not in that, which I think is all in the PSR,
4 or -- yeah, I mean, I have not talked to Probation at
5 all until this morning as we were getting ready to
6 go. Does that help?

7 MS. KATZE: Well, I appreciate you sharing
8 that, but the problem is I don't know what's in their
9 recommendation, I don't know what's in the
10 recitation --

11 THE COURT: Well, I can read it because
12 they recommend what Mr. Marshall does; they recommend
13 the high end of your range, and they just tell me how
14 you would run it, because remember, this is a
15 consecutive, so it's got a little bit of complexity.
16 And they just simply say: "It's respectfully
17 recommended that the defendant be committed to the
18 custody of the Bureau of Prisons for a term of 171
19 months, and that any fine be waived. A mandatory
20 penalty assessment should be assessed." They give
21 the amount. They recommend four years of supervised
22 release. And then they talk about attachment A, what
23 we call the Bruce memo in this district, and the
24 sentencing language. And then they recommend that I
25 not grant any voluntary surrender. And that's all.

1 MS. KATZE: Okay. So, Your Honor, I
2 understand they make a recommendation for 171 months.
3 So they don't write out why they think that's a
4 reasonable sentence?

5 THE COURT: No. The tradition in this
6 district is -- and it's partly because of me so that
7 we are very transparent, they do that in the PSR. So
8 if you look at part F on paragraph 151 of the current
9 one, that's where they list out the factors. And
10 then in paragraph 52 they say: Based on the above
11 factors, a sentence pursuant to Rule 11(c)(1)(C) may
12 be warranted. When she say "may be warranted,"
13 that's their signal that they think that's the range
14 that's appropriate. They're kind of respectful.
15 They don't tell me that's the sentence should be
16 imposed. They say "may." But that's their signal
17 that they either think a guideline sentence is
18 appropriate. But in this district, somewhat at my
19 urging -- and I think they follow it throughout with
20 my colleagues -- they do that publicly, so that you
21 have something to shoot at; that there is not
22 something behind the scenes, it's all very public.
23 And then we as judges have to decide whether we're
24 going to follow their recommendation, the
25 Government's recommendation, or the defense lawyer's

1 recommendation.

2 MS. KATZE: Well, thank you, Your Honor.
3 And I appreciate you talking about fairness and
4 transparency, because that is my concern. And I
5 completely trust your representation that you did not
6 get any additional information from Probation.

7 I guess my concern is even at the very
8 minimum, she's recommending the high end of the
9 guidelines.

10 THE COURT: No, no, no --

11 MS. KATZE: I meant of the 11(c)(1)(C)
12 guideline range, sorry.

13 THE COURT: She's in agreement -- sometimes
14 I guess they recommend that a plea agreement be
15 rejected.

16 MS. KATZE: No, no --

17 THE COURT: They're not here, they're
18 saying the range y'all have come up seems to be
19 appropriate, and they think something in that range,
20 and then they draft it out, script it.

21 MS. KATZE: So my only final concern, Your
22 Honor, and then I will move on, is that in making
23 that recommendation to the Court, what is that based
24 on? Is that based on any information that I don't
25 have access to? That's my concern. She had a

1 conversation with the case agent, and I feel that I
2 should be entitled to exactly what the Court was
3 talking about, fairness and transparency, to know
4 what information she got. Because we already know;
5 we have concrete evidence that she got information I
6 didn't. So all I was asking -- that was my request.

7 THE COURT: My experience has been -- and
8 you can tell me if yours is different -- that when
9 defense counsel just asks Probation almost anything,
10 they'll tell them. I mean, if you say: Where did
11 you get this information, anything else that was
12 told, Probation is pretty open about that. Do you
13 have a different experience with Probation?

14 MS. KATZE: No. The probation officer
15 answered my questions, sent me the page of the
16 report. And then, when I pointed out that wasn't
17 what it reflected, she said she talked to the case
18 agent. It seemed appropriate to me, like the next
19 step would be to talk to the Assistant U.S. Attorney
20 and have him talk to the case agent and find out what
21 was discussed. Under that circumstance, that seemed
22 like the appropriate next step to me.

23 THE COURT: I mean, I don't think any of us
24 want to discourage Probation from doing their
25 independent investigation. That's good for all of us

1 that they're not relying just upon Government
2 documents; they're not relying just upon discovery,
3 but they're working; they're working and doing their
4 own independent investigation. I think that's good
5 for all of us. And then, if they're willing to tell
6 you where they got it, it seems to me that's a
7 plus-plus for all of us. Would you agree with that
8 sort of approach?

9 MS. KATZE: Absolutely. Especially if that
10 last part happens.

11 Okay, Your Honor, if I may, I just have a
12 couple of factual corrections. In the Government's
13 sentencing memo, page 3.

14 THE COURT: The Government's --

15 MS. KATZE: Sentencing memo, page 3,
16 they're talking about -- this is the 924(c) count --
17 he writes that the Officer Guipan (phonetic), he
18 could not make out the male's face.

19 And I just want to clarify that that is not
20 what the officer said. I'm going to read a couple of
21 things from the complaint. And I just point out this
22 is important because this is actually a weakness in
23 the Government's case, and goes to the reason why the
24 plea is certainly a benefit to both parties. What
25 happened is after during the chase here, in the

1 complaint it says Officer Guipan pulled alongside of
2 the vehicle and was able to clearly view its
3 occupants.

4 Further down, Officer Guipan again clearly
5 saw the male driver and female occupant as the two
6 vehicles traveled side on with each other briefly.

7 The reason that's important, Your Honor, is
8 that they eventually stop a man that they think that
9 matches the description of who Guipan thought he saw.
10 It turned out not to be him, according to another
11 witness.

12 We haven't litigated that at all. We have
13 not challenged that. There were no -- had we not had
14 a plea agreement, we would certainly be challenging
15 the veracity of that. But as part of the plea
16 agreement, Mr. Black stepped forward, took
17 responsibility, admitted what he had done. And,
18 therefore, the Government did not have to put their
19 proof to the test.

20 But I'm pointing out a specific place where
21 there is an error in the Government's sentencing
22 memo, but maybe more importantly to the point of the
23 Court asking about weaknesses in the Government's
24 case and reasons why the plea is appropriate. That
25 would be a correction.

1 I also want to point out another thing in
2 the Government's sentencing memo, on page 4, the
3 Government says at the end: "The defendant may also
4 have known -- may have been concerned that law
5 enforcement suspected he was involved in a murder
6 investigation." There is absolutely no evidence
7 whatsoever that Mr. Black knew, had any reason to
8 know he's a suspect in a murder investigation. He
9 was not. So that's pure speculation. Again, it's
10 sensationalism.

11 THE COURT: Let me ask this, though, is the
12 factual -- is the factual statement that he brought
13 tarps and plastic and arrived at the scene, is that
14 correct?

15 MS. KATZE: Your Honor, I don't have any --
16 I'm not opposed to the fact that he brought tarps and
17 plastic to the scene. But there is no evidence --
18 what you're bringing up is a separate issue. The
19 first issue is -- the issue I brought up is with
20 respect to the Government talking about why he may
21 have tried to flee or why he may have had a gun,
22 because he thought he was -- or why he may have been
23 shooting at a police officer, because he may have
24 known he was a suspect in a murder investigation.
25 That's just completely not true. The Government's

1 throwing that out as speculation as to why he might
2 have. There is no evidence of that at all. So I
3 think that's unfair speculation.

4 In answer to your question, Your Honor,
5 with respect to asking about the tarps, I do want to
6 specifically talk about that, because you're right,
7 the Government intimates that Mr. Black somehow was
8 involved in the planning because he brought the tarps
9 and the plastic. Again, it's totally speculating as
10 though my client was involved in the preparation.

11 And the truth is -- I think evidence would
12 show that he had absolutely nothing to do with the
13 preparation. Whether or not he knew people were
14 planning to beat up a woman who stole money is a
15 separate issue. But he had nothing to do with the
16 preparation. And I think it's far more likely what
17 happened after those people, as they say in their
18 statements, went too far and killed Jessica Mora,
19 that they called Johnny Black and asked him if he
20 would help them. So it's all part of accessory after
21 the fact.

22 And I really find it unfair intimation by
23 the Government that he somehow was involved in the
24 planning, when there is no evidence at all that he
25 was involved in the planning, and the Government

1 agrees he wasn't involved in the murder whatsoever.

2 Does that address your question, Your
3 Honor?

4 THE COURT: Yeah, I didn't know what your
5 thoughts were on that. But I understand that.

6 MS. KATZE: There is no evidence that he
7 went out and got tarps and plastic. I think it's far
8 more likely, given what the actual evidence is, that
9 after they went too far and they killed this woman,
10 that they called and asked him to help, and asked him
11 to bring plastic.

12 Your Honor, I wanted to -- and this is
13 related to several of my objections. And it kind of
14 addresses the issue of relevant conduct and
15 reliability of the informant information. So,
16 unfortunately, the way I got discovery I don't know
17 who said what. The reports are all so heavily
18 redacted, I have no idea who said what. There are
19 little snippets. And Probation chose to sort of do
20 it like an amalgamation of all the informants and
21 just refer to the confidential informants.

22 So I already mentioned this earlier. But I
23 just want to reiterate again that the information
24 that the Court relies on to come up with this
25 sentence must not just be relevant, but it has to be

1 reliable.

2 First, I want to talk about relevant
3 conduct, because both Probation and the Government
4 keep referring to relevant conduct. It's not
5 relevant conduct. Anything having to do with the
6 murder is not relevant conduct. Anything having to
7 do with the murder should not be in the report.
8 Johnny Black is not accused of the murder, nobody
9 thinks he was -- participated. He has not pled
10 guilty to the murder. He's pled guilty to accessory
11 after the fact including all those sensationalized
12 details which obviously -- I mean, obviously they are
13 heartbreaking and dramatic details -- is unfair. And
14 it's a plea -- it's an unfair emotional plea. And
15 it's not fair to have those in Mr. Black's
16 presentence report.

17 Let me read to you from Section 1B1.3, with
18 respect to relevant conduct, because, as I said,
19 Probation and the Government are arguing that's
20 relevant conduct. It's not relevant conduct. That's
21 not what relevant conduct is.

22 THE COURT: Well, but let me ask this:
23 Since the crime is accessory to the fact, doesn't the
24 Court have to have a robust understanding of what the
25 crime is that the defendant is saying they are an

1 accessory to?

2 MS. KATZE: I'm not sure you need a robust
3 understanding. I think you do need to know that
4 there was kidnapping that led to a murder. I
5 understand that. I don't think you necessarily need
6 three or four pages of details of how the person was
7 beaten and injured and killed, when Johnny Black had
8 nothing to do with that. It's just completely
9 separate crimes, accessory after the fact.

10 I'm going to -- let me just -- I just want
11 to read this, because relevant conduct is a term of
12 art in federal court, right, in the guidelines. You
13 can't just sweep anything you want and say it's
14 context and it's relevant conduct. That's not what
15 relevant conduct is. A defendant's relevant conduct
16 does not include the conduct of members of a
17 conspiracy prior to the defendant joining the
18 conspiracy, even if the defendant knows of that
19 conduct. We don't even have a conspiracy here.
20 Johnny Black is not charged with conspiracy. There
21 is no conspiracy charge. So this, I think, makes the
22 point that even when there is a lower bar, when there
23 is actually conspiracy, the defendant's relevant
24 conduct does not include the conduct of members of
25 the conspiracy prior to the defendant joining the

1 conspiracy. The accountability of the defendant for
2 acts of others is limited by the scope of his or her
3 agreement to jointly undertake the particular
4 criminal activity. Acts of others that were not
5 within the scope of the defendant's agreement, even
6 if those acts were known or reasonably foreseeable to
7 the defendant are not relevant conduct. I mean,
8 that's exactly what we have here.

9 THE COURT: Well, I guess I don't have any
10 problem with everything that's in the PSR being in
11 the PSR. Is your concern that certain portions of it
12 should have another title on it and moved to a
13 different section?

14 MS. KATZE: No, I don't want it in the
15 presentence report.

16 THE COURT: I know you don't want it in
17 there.

18 MS. KATZE: It doesn't belong there. And I
19 don't want you to consider that. I don't want you in
20 your sentencing decision to be considering these
21 terrible facts of a murder that my client didn't
22 participate in.

23 THE COURT: Let's just say your version of
24 the facts is correct; he received a phone call saying
25 something went terribly wrong, it seems to me that

1 what went terribly wrong and what brought him to
2 start bringing tarps and plastic and those sort of
3 things is terribly relevant, I mean, even by your
4 theory.

5 MS. KATZE: Yes, so this is what I think
6 would be appropriate: The list of names of the
7 alleged murderers that is in the presentence report.
8 According to the evidence, Jessica Mora stole a debit
9 card from Crystal Ramos, stole \$400 from her; Crystal
10 Ramos found out. She and the other people and that
11 list of people got Jessica to come over to the house
12 with the intention of beating her up and teaching her
13 a lesson. And that apparently went too far and she
14 was killed.

15 MR. MARSHALL: Your Honor, if I --

16 THE COURT: No, no, I'll let you come back
17 if you want.

18 MS. KATZE: You don't need three pages of
19 those salacious details, when my client didn't
20 participate in the murder. Your Honor, if I may ask:
21 Why do you think it is relevant for you to have all
22 the horrific murder details in the presentence
23 report? And it even concerns me that we're spending
24 so much time arguing over this because I feel like
25 it's just reinforcing the facts of the murder, which

1 I think is unfairly considered by you, if it is being
2 considered by you.

3 THE COURT: No, it is. I mean, I think it
4 adds to the horrendous nature of everything that
5 occurred here. But I still think, even in your
6 version of events, it may be that all these details
7 were part of what caused Mr. Black to do what he did.

8 MS. KATZE: But why do you think that? Why
9 would it not just be sufficient for his friends to
10 have told him: We killed this person; get over here
11 and help us? Why is -- whether they beat her up or
12 kicked her, why is that relevant, when everyone
13 agrees, everyone agrees my client wasn't there, had
14 nothing to do with the murder? The Government
15 agrees, all the heavily redacted witnesses. Why is
16 that relevant?

17 THE COURT: Well, if they did take a power
18 tool and start drilling into her body, that might
19 have been some reason why they decided they needed to
20 destroy a body and mutilate it and burn it.

21 MS. KATZE: Why is it relevant? Why is
22 that relevant? What's relevant is that my client was
23 accessory after the fact. He participated in trying
24 to get rid of the evidence.

25 THE COURT: Well --

1 MS. KATZE: I mean, you're right, but
2 that's the whole problem. That's a horrible fact to
3 hear that somebody drilled into the side of a person.
4 But my client -- 100% we know my client didn't do
5 that. He wasn't even there. So the fact that the
6 Court is pointing that out as a horrible fact that is
7 taken into consideration is exactly, exactly my
8 concern.

9 THE COURT: Okay. Well, I'm leaving the
10 material in. I mean, it seems to me it's highly
11 relevant to determining what he's an accessory to,
12 and what was going through his mind and why he was
13 doing what he did. If there is some issue about it
14 being relevant conduct and it needs to have a heading
15 or something where he joined the conspiracy, but I'm
16 not sure that it affects at all the guideline
17 sentence. It's just maybe -- I haven't really
18 studied it.

19 MS. KATZE: I don't think it affects the
20 guidelines, Your Honor. I think it affects your
21 mind. That's what concerns me. You have to make a
22 judgment between 154 and 171 months. And if you're
23 thinking about these horrible facts of the murder,
24 right, that colors the way you weigh all the factors.

25 THE COURT: Well, I've already put down --

1 and I'm sure you're going to give me others -- on
2 putting downward pressure on the sentence is the fact
3 that he was not involved in the murder, and no
4 witnesses have indicated that he was part of the
5 murder. Those are good factors for him, so I -- I'm
6 trying to be very balanced here, but those seem to be
7 very important factors for your client. And I have
8 written those down to emphasize to myself, and I will
9 probably repeat it when I give the sentence, because
10 I think those are very important things to remember.

11 MS. KATZE: I appreciate that, Your Honor.
12 I think you're right, in your parlance that that is
13 downward pressure.

14 My concern is what, in your mind, is upward
15 pressure. And I'm just afraid that some of those
16 things they're not fair, they're not fair that those
17 would be providing upward pressure.

18 THE COURT: I'm looking at the things that
19 I have listed so far as putting upward pressure, and
20 I do not see anything that I have written down that
21 goes before he arrived at the scene. So I understand
22 your concern, but I think I'm compartmentalizing
23 these -- I think I'm compartmentalizing these. I
24 don't see a single thing about before he was
25 involved, just looking through my notes so far.

1 MS. KATZE: Your Honor, I will move on as
2 far as the relevant conduct issue. I think the Court
3 understands my position.

4 What I'd like to say under my objections
5 for not just relevant conduct, some of the assertions
6 that the Government made, I want to just briefly talk
7 about the importance of the indicia of reliability.
8 And I talked about that right from the beginning,
9 even including the victim's family. But in this
10 particular case I think the credibility of these
11 anonymous -- basically anonymous CIs -- their
12 statement is relevant, right? The reliability of
13 their statements are critical. Obviously, the Court
14 is considering that. That's the only factual basis
15 for this murder that the Court is considering. And I
16 just want to --

17 THE COURT: When you go to this, what is it
18 that you think I might be relying on that you're
19 particularly concerned about the credibility or
20 the --

21 MS. KATZE: The whole factual effect on the
22 presentence report comes from the heavily redacted
23 reports of all this -- like conglomeration of
24 confidential informants. And here's the problem: We
25 don't know who the confidential informant is. There

1 is an issue of credibility and reliability. And the
2 Supreme Court has said that "an accused has a due
3 process right not to be sentenced on materially
4 incorrect information." I'll refer you to two
5 specific cases: United States versus Tucker, 404
6 U.S. 443, at 447, said that an "accused has a due
7 process right not to be sentenced on materially
8 incorrect information."

9 Townsend versus Burke, 334 U.S. 736 at 741,
10 "Due process violation for a sentence to be based on
11 assumptions that were purely untrue."

12 And, Your Honor, even the Tenth Circuit has
13 specifically addressed issues of the importance of
14 indicia of reliability. And that specific case, the
15 case I'm referring to, is U.S. versus Fennell. It's
16 a Tenth Circuit case, 65 F.3d 812. And they
17 specifically talk there about the court relying on
18 unsworn allegations, where there is no opportunity
19 for the court to have observed the people making the
20 statements, and that they can't really make any type
21 of opinion with respect to the veracity of the
22 speaker.

23 And so those are my concerns, Your Honor,
24 with respect to relying on the statements of this
25 amorphous group of informants. And so I said I would

1 talk about relevance, conduct, and indicia of
2 reliability. And so I just wanted to follow up with
3 that. And kind of related to that, Probation refers
4 to, and the Government kind of supports referring to
5 these alleged murderers as co-conspirators. A
6 conspirator -- again, it's a word we have to be
7 careful of, right? It's a term of art. And the
8 point is that those other people are probably
9 co-conspirators in the commission of a murder. Can
10 you co-conspire to kidnap, leaving a murder, and then
11 when you try to get rid of the body you conspire to
12 be accessory after the fact? That's not how it
13 works, that's not how it breaks down.

14 Mr. Black is not a co-conspirator. He
15 wasn't involved in the murder. He's accessory after
16 the fact. Just so that we remember, I just want to
17 briefly read you from 18 USC 3, Accessory After The
18 Fact. "Whoever knowing that an offense against the
19 United States has been committed received, relieves,
20 comforts, or assists the offender in order to hinder
21 or prevent his apprehension, trial or punishment is
22 accessory after the fact." Those are the elements of
23 that crime. Those are the only elements of that
24 crime. There is no victim in the elements of that
25 crime. There is no specific harm to anybody in the

1 elements of that crime.

2 Your Honor, I will move on at this point to
3 some of the arguments that we had in our -- in the
4 sentencing memorandum. One of the things -- and Mr.
5 Marshall has already talked about Mr. Black's, what I
6 would call highly unusual disclosure. The
7 authorities would not have discovered the evidence of
8 the murder without Johnny Black's assistance. They
9 have, at least as best I can tell from the highly
10 redacted reports, they have confessions from a number
11 of people to a murder, but they have not charged
12 anyone. So now, as a result of Johnny Black's
13 assistance, they have something. Now, it was the
14 Government that approached Johnny Black because they
15 had nothing; they had no idea where the remains were,
16 and now they have them. And they can start working
17 on charging the people who are actually responsible
18 for the murder. And Johnny Black agreed to do that
19 because he believed it was the right thing to do.
20 And it's important that we see this, the fact that he
21 did this, as him showing remorse. And it's a
22 significant step towards his rehabilitation. And the
23 family can finally have closure.

24 With respect to the issue that -- I brought
25 this up in my objections -- and again, I'm going to

1 state I would like the section about tattoos and
2 gangs removed from the presentence report. Mr. Black
3 does not have a tattoo on the back of his neck that
4 says "CK." He has never been a member of the gang
5 that Probation is again speculating that he's a
6 member of. It is very dangerous for Johnny Black to
7 go to federal prison, which he's obviously going to
8 go to for a substantial amount of time, with that
9 information conveyed to the Bureau of Prisons,
10 included in his presentence report. I mean, that's a
11 very dangerous allegation to make. I looked at the
12 back of his neck; it does not look like a CK to me.
13 I saw Probation sent me a picture from Facebook where
14 his hand is up. It is complete speculation. There
15 is no evidence of it. She got the information that
16 he had that tattoo from a report from the Aurora
17 Police, and they incorrectly identified a tattoo.
18 She took it a step further and attributed it to be
19 part of a gang of which he is affirmatively not a
20 member. So I would ask that that be taken out, any
21 mention of that tattoo, any speculation to the
22 meaning of tattoos, and the Facebook picture. I
23 think that --

24 THE COURT: What paragraph is that, Ms.
25 Katze?

1 MS. KATZE: Well, it's discussed a couple
2 of different places in the presentence report. Do
3 you want me to tell you specifically?

4 THE COURT: If we're going to --

5 MS. KATZE: It's in my objections, Your
6 Honor.

7 THE COURT: Well, I know, I thought that --
8 oh, I guess maybe I was hoping that most of the
9 objections had been taken care of, but we're --

10 MS. KATZE: No, the last addendum Probation
11 indicated that she was asking Cibola to check and see
12 if he had that tattoo. I looked at the tattoo this
13 morning. He does not have that tattoo. That
14 information needs to come out.

15 THE COURT: Well, tell me which paragraph.

16 MS. KATZE: Okay. So let me get my
17 objections. Let me see if I have those here. Let me
18 get my objections, because it's in all the places
19 that I mentioned in my objections. So in my
20 objections on page 3. It's mentioned in paragraph
21 96, paragraph 116, and paragraph -- I'm sorry --

22 THE COURT: Let's go one at a time.
23 Paragraph 96. All right. You must be using the old
24 PSR.

25 MS. KATZE: I'm sorry, it was from the

1 original PSR that I related my objection to it.

2 PROBATION OFFICER: I think it's paragraph
3 95, Your Honor.

4 THE COURT: 95. Is there any problem with
5 the first sentence? "It is noted that a photo from
6 the defendant's Facebook page shows him holding up a
7 hand sign."

8 MS. KATZE: Yes, I would object to that.
9 What's the relevance of it?

10 THE COURT: Well, I think generally people
11 think those are gang signs.

12 MS. KATZE: Right, exactly. And that's
13 speculation and it's unfair speculation. And I would
14 remind the Court that the Supreme Court says
15 Mr. Black has a due process right not to be sentenced
16 on materially incorrect information and speculation.

17 THE COURT: There is nothing incorrect
18 about it. It's what he did. We'll determine the
19 relevance of it.

20 All right. Let's go to the physical health
21 section. "He has a tattoo of CK."

22 Have you looked at his neck, Mr. Marshall,
23 and determined whether that's correct or not?

24 MR. MARSHALL: I have not, Your Honor.

25 THE COURT: Do you want us to take a look

1 at it? Do you want us to look at his neck and see
2 whether it is?

3 MS. KATZE: I looked at his neck and he
4 does not have CK tattooed on the back of his neck.
5 You're welcome to come down and look at his neck.

6 MR. MARSHALL: Your Honor, it's supposed to
7 be on his neck, and I thought it was possibly the
8 left side of his neck. I don't know if it was
9 clearly the back versus the side. Looks like he has
10 a paw print.

11 THE COURT: Do you mind me asking him, Ms.
12 Katze -- it's in cursive writing, and I'm having a
13 little trouble seeing what it is.

14 MS. KATZE: I can answer that question for
15 you. I'd rather answer it.

16 THE COURT: Okay.

17 MS. KATZE: That is a name of a friend of
18 his.

19 THE COURT: It's not CK?

20 MS. KATZE: No, it is not. He's not a
21 member of that gang.

22 THE COURT: Why don't you turn him a little
23 bit to see what's on the left side of his neck. I
24 see a name here. These look like initials right
25 here.

1 MS. KATZE: I believe it's an old tattoo.

2 THE COURT: What do you think that says
3 right there?

4 MS. KATZE: I think it's just part of an
5 old tattoo of a name. I think the fact that it's so
6 unclear to you, Your Honor, what it is, is further
7 evidence that it is not CK. And if Johnny -- I think
8 you have experience with this, Your Honor -- gang
9 members don't disavow the tattoos of their gangs.
10 And the fact that he's so adamant about the fact that
11 that is not a CK, that he's not a member of that
12 gang --

13 THE COURT: All right. So we'll take out,
14 "He has a tattoo of CK, which may relate to Crip
15 Killer," and I'll take out the evidence of "the
16 affiliation with the blood gang."

17 MS. KATZE: Thank you.

18 THE COURT: I'll take out the last sentence
19 as well. Are you comfortable with that, Mr.
20 Marshall?

21 MR. MARSHALL: Yes, Your Honor.

22 THE COURT: So I'll just take out
23 everything but that first sentence.

24 All right. What other --

25 MS. KATZE: So it sounds like the numbers

1 all went back.

2 THE COURT: That's fine.

3 MS. KATZE: Originally it was 96, 116, 151.

4 So let me see if it's 115. It is? Okay. So it's
5 now 115.

6 THE COURT: Okay.

7 MS. KATZE: It's in the middle there.

8 And then the final thing is in the
9 Probation's --

10 THE COURT: All right. So just take out
11 the CK.

12 MS. KATZE: Yes, thank you.

13 THE COURT: So I'll take out that. The
14 rest of that is accurate?

15 MS. KATZE: Yes, I believe so. Or my
16 client -- when I read it to my client he did not
17 articulate anything.

18 THE COURT: What else, Ms. Katze?

19 MS. KATZE: Then it was in the final --
20 it's 151, so maybe now it's 150. It's under factors
21 that may warrant a sentence outside of the
22 guidelines.

23 THE COURT: Okay.

24 MS. KATZE: So under the part where it says
25 "Nature and circumstances of offense and history

1 characteristics of defendant --

2 THE COURT: Yes.

3 MS. KATZE: -- the fourth to last thing
4 says -- I mean, sorry. Yeah, sorry. The fourth to
5 the last thing says, "The defendant appears to have
6 some gang affiliation."

7 THE COURT: Okay, I'm not seeing that yet.

8 MS. KATZE: Do you see under "Nature and
9 circumstances of the offense history and
10 characteristics"?

11 THE COURT: Yes.

12 MS. KATZE: "The defendant was primarily
13 raised by his mother, the defendant's adoptive
14 mother." "The defendant is a 34-year-old man." The
15 one right after that. So it's four down and four up.
16 So it's the middle thing under that section.

17 THE COURT: All right. So I'm going to
18 find -- unless you think otherwise, Mr. Marshall, I
19 find that the Government has not established by a
20 preponderance of the evidence that he has gang
21 affiliation. Just simply showing that in a picture,
22 I mean, you almost can't take a picture of a boy
23 anymore in America without them doing that. So I'm
24 going to take out "appears to have some gang
25 affiliation and." Is that acceptable to you?

1 MR. MARSHALL: Yes, Your Honor. I mean,
2 it's as much for his protection and the safety of
3 other inmates, so --

4 THE COURT: So that works for you, Ms.
5 Katze, there?

6 MS. KATZE: Yes, Your Honor. Thank you.

7 THE COURT: What else, Ms. Katze?

8 MS. KATZE: Your Honor, so moving on in my
9 sentencing memo I talked about Johnny -- and not to
10 go over every single thing in my sentencing memo --
11 but I think it's important to know and appreciate his
12 background; that he's from this very small, remote,
13 very isolated rural community in Alaska. And I think
14 at first blush it almost sounds idyllic, but it's
15 pretty bleak up there. I had actually hoped to be
16 able to go up there and make a sentencing video for
17 you. But understand the circumstances that we're in,
18 with COVID and restrictions, I wasn't able to do
19 that. But after talking to people who live in the
20 village, family members, and talking to Johnny about
21 it, I don't know that I can do justice in explaining
22 just how remote and isolated it is. The village is
23 700 people, and they're basically all Native
24 Alaskans. And the travel between villages, we
25 actually Googled it, and you can see -- there are

1 some YouTube videos of, in the winter how they have
2 to travel between the villages. It could take all
3 day. They go on snowmobiles. There are some cars in
4 the village, and those come in either when the snow
5 thaws and they can come in on the river if a barge
6 can come through, or they figure out how to put like
7 skids on the bottom of, like, say a pickup truck
8 under the wheels and pull that with snowmobiles to
9 pull that to the next village. There are small
10 planes that come in that deliver the food. And if
11 you have enough money, you can get to the next
12 village in the plane. But it is so isolated. And
13 there are just no opportunities there.

14 And I talked a little bit about the school
15 situation. They have 54 percent graduation rate.
16 And I think they have 12 teachers. 100% of the
17 students there are poor enough to qualify for free
18 lunches. So I wanted the Court to look at that.

19 That's sort of the backdrop behind the fact
20 that -- and Johnny gets diagnosed with learning
21 disabilities and he's in Special Ed. How do you
22 really do Special Ed when you have 12 teachers in the
23 school? And so I think it was really difficult
24 there.

25 And with respect to his parents -- this is

1 just an indication of how tragic things are -- he did
2 not meet his father until he met him in jail, when
3 they were both in jail, when he was 18 years old. He
4 was raised by his mother who -- as I talked about in
5 the sentencing memo, suffered from very serious
6 alcoholism. I mean, right up until her sad death,
7 that she died alone of exposure in a park because she
8 was intoxicated. And growing up, she was quite
9 abusive to Johnny and his siblings. So Johnny found
10 himself in a caretaker role trying to protect his
11 siblings and keep them away from his mother, and kind
12 of try to monitor her mood, how angry or mean she
13 would be.

14 And I told you about the fact that Johnny
15 has two children, and sadly has lost custody of one
16 of them, but luckily has maintained close contact
17 with his daughter, Cara. I talked to Cara's mother,
18 Carol, who works in a native store, which I also was
19 able to see on YouTube video. It's a teeny little
20 store with narrow aisles you can barely walk down.
21 She's really supportive of Johnny and his
22 relationship with Cara.

23 And in sort of moving on, I think the sad
24 heart of the problem, the alcoholism or substance
25 abuse -- Johnny in no way, by the way, is denying

1 that he used methamphetamine. I thought maybe the
2 Government in their sentencing memo was making it
3 sound like he's just calling himself an alcoholic;
4 he's not a drug addict. He absolutely struggles with
5 substance abuse in the most general terms. And he
6 did use methamphetamine and was addicted to it. So
7 he recognized that alcohol is his biggest challenge,
8 and that's generally been where that connection to
9 him making some very bad decisions and him getting in
10 trouble. There is so much evidence of the hereditary
11 nature of the disease of substance abuse, including
12 alcoholism. And I provided some there. And it's
13 just an extremely destructive disease. And it is a
14 disease. And Johnny struggles with it.

15 And so did Jessica Mora. And sadly,
16 Jessica Mora was a drug addict as well. She was
17 struggling. And her family described her as expert
18 at stealing money. And they have reported that she
19 stole \$500 from Nicole's debit card; that was her
20 niece that was here in the wheelchair. And she stole
21 \$160 from Claudette's debit card; that's her aunt.
22 And I know that there is a period of time that she
23 was estranged from her family. I understand how that
24 happens. When you have a child, even though it's
25 heartbreaking, when they're a drug addict and they're

1 stealing from you, sometimes you just have to draw
2 the line and say that: You can't have anything to do
3 with them.

4 So I think sadly what happened is Jessica
5 Mora had stolen from her family, taking the debit
6 card. She stole Crystal Ramos' debit card, and she
7 stole \$400. And she did not deserve to die for \$400.
8 I assume she stole that \$400 because she was a drug
9 addict, because she was a substance abuser. And the
10 woman that she stole from that day, and the people
11 who were with Crystal Ramos, they should have shown
12 her mercy. They should have shown her mercy. She
13 was wrong for stealing that money, and she made a
14 mistake. But they should have shown her mercy.

15 Johnny Black made a mistake, he did
16 something wrong. He made bad decisions because he,
17 too, suffers from the horribly destructive disease of
18 substance abuse.

19 We're asking that you show him some mercy
20 and sentence him to 154 months.

21 And I'm asking that you give him 3 years of
22 supervised release. Evidence shows that over and
23 over again negative results of too much punishment
24 and too much supervision. Too much supervision, more
25 and more there are some really good studies on point

1 about that, about how ineffective too much supervised
2 release is.

3 Also, I would ask that you give Johnny some
4 kind of treatment for this horrible disease of
5 addiction that he suffers from. He's taken a big
6 step towards his rehabilitation, I think, by
7 assisting the Government. And I think now part of
8 his continued rehabilitation he needs treatment. And
9 I think even the Government recognized. They pointed
10 out in their sentencing memo -- and I appreciate the
11 Government's recognition of this -- they said that
12 Johnny was distraught over the death of his
13 girlfriend at the hands of the police, and that it
14 was substance abuse, his sense of hopelessness after
15 Ramos death that caused him to shoot at police. They
16 also recognize that it was -- the fact that they
17 recognized that his substance abuse played a major
18 role in him making bad decisions.

19 I would also point out that one of the
20 addendums Probation filed, they were able to just
21 recently get information about how well Johnny did in
22 a program that he participated in in Northern New
23 Mexico. And I think that that's important, because I
24 think it shows that he really wants -- he wants to do
25 better and he wants to be a better person. He wants

1 to be healthy. Why wouldn't somebody want to be
2 better and be healthy?

3 So I would ask that, again, that you
4 sentence him to 154 months and 3 years supervised
5 release.

6 And I just want to end with this one last
7 comment. I wanted to point out that Jessica Mora's
8 brother, Alan, who spoke, his plea to you at the end
9 of his presentation was that you hold the people
10 responsible for her horrific death. And so I think
11 what they're looking for is not -- they're not going
12 to feel that complete relief until the actual
13 murderers, people who have already confessed to the
14 actual murder, are actually prosecuted. And Johnny
15 is not the person who murdered her.

16 Thank you, Your Honor.

17 THE COURT: Thank you, Ms. Katze. Have I
18 ruled on all your objections? Did I get them all?
19 We've changed the PSR.

20 MS. KATZE: I think so. And actually, I
21 think I should say one more thing just to address
22 your very original question about accepting the plea.
23 With respect to the accessory after the fact, the
24 Government could never have charged him with that.
25 They had not originally charged him with that in the

1 complaint. They couldn't have charged him with it.
2 He never made a statement about it. There was no
3 actual evidence of it. So they couldn't have charged
4 him with it without his own admission. And he agreed
5 to plead guilty to it and admit his involvement in
6 it. And I think that's a substantial thing right
7 there. Because like I said, they would not have been
8 able to have charged him without his own admission.

9 THE COURT: All right. Thank you, Ms.
10 Katze.

11 Now we're going to take the statement from
12 Mr. Black?

13 MS. KATZE: Do you want him to sit there?

14 THE COURT: Did he find his statement?

15 MS. KATZE: Yes, they found it. Somebody
16 was able to. Do you want him to stand here?

17 THE COURT: He doesn't have to stand. He's
18 welcome to stand. Just as long as Ms. Bean can hear
19 him. So if he wants to stay seated and talk into the
20 mic. Whatever works for him.

21 Mr. Black, you have an opportunity to speak
22 on your own behalf before sentence is imposed. What
23 would you like to say to the Court, and what would
24 you like the Court to consider before it imposes
25 sentence this morning?

1 THE DEFENDANT: First of all, Your Honor,
2 you know, what I was involved in, you know, there is
3 no -- I'm very sorry. If I had showed up at that
4 house a lot earlier, I believe in my heart that
5 Jessica Mora would still be here. I don't think she
6 should have died -- she shouldn't have died over
7 \$400, you know what I mean? And my involvement after
8 the fact of that, you know, I cannot apologize
9 enough. I can't give that family back a daughter, a
10 friend, a cousin, a sister; you know, I can't give
11 that back. I can say sorry, you know, because how
12 would I feel if someone took my sister? I would be
13 hurt. But I just want to, you know -- I apologize,
14 and for my actions. And I'm going to go to prison
15 for a long time, and I just want you to know that, as
16 a man, I do apologize for my involvement in what
17 happened to Jessica Mora after the fact of her death.
18 And like I said, I can't give her back. I can't
19 recreate those moments for you guys, you know. I
20 apologize. And I just want you to know that whatever
21 time the Judge gives me, you know, I will serve this
22 time, and I will be thinking about her, you know. I
23 knew Jessica Mora for a little while, not that long.
24 She helped me around with a couple of things around
25 the house. You know, she helped me with some carpet.

1 She was a very smart woman. I will think about
2 those. I will think about your family. And I'm
3 going to have to live with those moments the rest of
4 my life, just as you will. And I just want you to
5 know I deeply apologize with all my heart. And I
6 brought a little letter for you, Your Honor, that I'd
7 like to read.

8 THE COURT: You may.

9 THE DEFENDANT: It goes: "To the Court,
10 Honorable Judge Browning, I would like to start off
11 by saying I am sorry for inconveniencing the Court
12 due to my irresponsible conduct and behavior in
13 society. I wrote this letter in regards to my
14 sentencing, and would like to personally apologize to
15 the Court, the community, as well as the family and
16 individuals I affected due to my behavior that
17 demonstrated irresponsible conduct. I understand
18 that my actions cannot go without punishment.

19 I have already began to utilize the time I
20 spent in pretrial detainer to better myself and to
21 correct my thinking pattern. I know, as a human, we
22 all have our problems and make mistakes. Mine was
23 allowing myself to be weak-minded and reliant on
24 drugs and alcohol to cope with my issues and
25 problems. I understand that those two substances are

1 my downfalls and causes of my problems that got me
2 into the situation I am about to face. Knowing that
3 I have an alcohol and drug use problem, I understand
4 that it is my responsibility to seek treatment if I
5 am to correct these problems and truly become
6 rehabilitated and an upstanding citizen of society.

7 With that said, Your Honor, I would like
8 you to know that whatever my sentence is, I am going
9 to use that time wisely to become a better father, a
10 better person in general.

11 At this time, I would like to ask you to
12 impose the sentence that is lesser in severity, that
13 still administers justice. This is so I am allowed a
14 second chance to become a new man as I strive to
15 close this chapter of my life and put it behind me.

16 Thank you for your time and considering my
17 letter, as well as your patience. Best regards.

18 THE COURT: All right. Thank you, Mr.
19 Black.

20 Anything else, Ms. Katze, from you or Mr.
21 Black?

22 MS. KATZE: Not right now, Your Honor.

23 THE COURT: All right. Did you have
24 something further you wanted to say on relevant
25 conduct or anything else, Mr. Marshall?

1 MR. MARSHALL: Yes, Your Honor.

2 First, I think I'd just like to change my
3 position in terms of the supervised release. Due to
4 the error in the plea, I think I would ask for 3
5 years of supervised release. I just don't want that
6 to become a potential appellate issue, since we had
7 the wrong term of supervised release under the
8 penalty section of the plea. So I would ask --

9 THE COURT: Did that get cleared up before
10 a magistrate?

11 MR. MARSHALL: No, it never got cleared up.
12 The defense said they weren't going to object, but
13 since it was in the plea language, I didn't want that
14 to become an issue in the future. It was the wrong
15 penalty was included as part of the plea, the maximum
16 penalty for the SR.

17 THE COURT: What did the plea say?

18 MR. MARSHALL: The plea says 3 years, the
19 real term should be 5. And just to prevent any
20 future issues, I would just ask for the 3 year
21 sentence since that was the maximum that was included
22 as part of the penalty section.

23 THE COURT: Well, I had this yesterday,
24 too. I think we better get it cleared up. The
25 Government did the wrong TSR in the plea. Let's take

1 a break; y'all talk to Ms. Wright, and let's get back
2 in front of a magistrate judge and replead this. If
3 there is a problem with the TSR --

4 MS. KATZE: Your Honor, I'm sorry to
5 interrupt. My thought was statutorily the maximum
6 term of supervised release is 5 years.

7 THE COURT: Oh, it's a maximum term?

8 MS. KATZE: Probation had the term
9 correctly in the presentence report. I went over the
10 presentence report with my client. And that's why I
11 said to Mr. Marshall I was not opposing him
12 arguing -- he wanted to argue for 5 years supervised
13 release. I said I would not oppose that. I
14 recognize that the term was 3 years in the plea
15 agreement, but I think the statute is different than
16 that, and Probation correctly has a possible penalty
17 in the presentence report.

18 MR. MARSHALL: Yes, Your Honor. So it
19 wasn't a minimum of 5, it was up to -- the plea said
20 "up to 3," and it should have said "up to 5." And so
21 just to prevent --

22 THE COURT: For some reason I've got two
23 PSRs, but I don't have any plea agreement. So maybe
24 in the break we're about to need to take I'm going to
25 have to get a plea agreement and see -- I take your

1 word for what it says, but somebody needs to probably
2 give me a plea agreement. Can Probation live with 3
3 years? I know y'all are recommending 4. Can you
4 live with 3 years?

5 PROBATION OFFICER: Yes, Your Honor, if the
6 parties are in agreement.

7 THE COURT: Well, if everybody is
8 comfortable with the record, I'll just sentence at 3
9 years supervised release, and we'll keep it there.

10 Why don't we do this, Mr. Marshall: You
11 have more things to say, but we've been going since
12 8:30, and I need to take care of Ms. Bean. Why don't
13 we take about a 15-minute break, and we'll come back.
14 That way we're not rushing you. And it's going to
15 take me a while to sentence him as well. So let's
16 take about a 15-minute break and we'll come back in.
17 Somebody give me -- there is only one plea agreement,
18 right?

19 MR. MARSHALL: Yes, Your Honor.

20 THE COURT: So just give me a copy so I
21 have it up here.

22 All right. We'll be in recess for about 15
23 minutes.

24 (The Court stood in recess.)

25 THE COURT: All right. We'll go back on

1 the record. Mr. Marshall, you were addressing the
2 Court about some additional remarks?

3 MR. MARSHALL: Yes, Your Honor. Some of
4 the things that I just wanted to kind of rebut that
5 came up from defense counsel's argument was -- the
6 first one that came to the charging. It is true that
7 nothing had been charged prior. But I would disagree
8 with the assessment that we would not have charged
9 him without his admission. Defense counsel must have
10 thought that there was enough evidence because he
11 also took the plea agreement.

12 I know that there was limited discovery in
13 this, as defense counsel has alluded to, as the crime
14 of the kidnapping and the murder of Jessica Mora is
15 still under investigation. But defense counsel and
16 defendant themselves must have felt that there was
17 enough evidence for them to plead guilty.

18 And that's something else I wanted to
19 mention. Defense counsel made some discussions about
20 the fact and the reliability of the evidence. But
21 when you look at the defendant's statement, which is
22 something that he's admitted to, that's part of the
23 plea agreement, and you look to the reliability of
24 the information, you see that law enforcement was
25 able to do -- to find the burn site, and that there

1 were -- where they found some of the initial remains.
2 They found also some fabric and some evidence that
3 they -- as well as some bones and some jewelry that
4 provided some means of identification. While OMI was
5 not able to identify from that information clearly
6 that it was Jessica Mora, there was indication that
7 it was a female. And then there was some identifying
8 jewelry that was found at the burn site. Defendant's
9 own information confirmed some of the information
10 regarding like the toolbox, and some of the other
11 information that had come in from the people that
12 were kind of listed generally as the informants. And
13 OMI discussed that the remains had been dismembered
14 and burned.

15 And with the language in the plea
16 agreement, I think that that information that came
17 from these different informants is relatively
18 reliable, especially on the key components when it
19 comes to the charges of the defendant. And when
20 we're looking at those, we see that these acts were
21 egregious.

22 And I wanted to also discuss some of the
23 things in the relevant conduct. Defense counsel was
24 quoting some of the portions of 1B1.3. But it's also
25 to note that through the case law, as well as from

1 the Sentencing Guideline book that the Court is
2 allowed to consider conduct that is not formally
3 charged or is not an element of the offense of
4 conviction, and that may enter the determination of
5 the applicable guideline sentencing range. The range
6 of information that may be considered at sentencing
7 is broader than the information upon which the
8 applicable sentencing range is determined. That's in
9 the background information, but it's also repeated in
10 the case law as well.

11 But it's also important to note, Note 9 is
12 specific to accessory after the fact. And that was
13 not something that was discussed necessarily by
14 defense counsel. Note No. 9 under 1B1.3 says, "In a
15 case of solicitation, misprision, or accessory after
16 the fact, the conduct for which the defendant is
17 accountable includes all conduct relevant to
18 determining the offense level for the underlying
19 offense that was known, or reasonably should have
20 been known, by the defendant." So it's clear that
21 under Note 9, the underlying conduct that is related
22 to the kidnapping resulting in death is relevant for
23 the Court to be considering at this time, and it's
24 part of relevant conduct for the Court.

25 So the objections by defense counsel seems

1 to be relatively moot at this point, because it is
2 clear that this is the kind of information that the
3 Court is to consider at sentencing.

4 And so there is no reason to either redact
5 or remove any of that because it is all part of
6 relevant conduct and all part of the information that
7 the Court should be considering.

8 Defense counsel also seemed to object to
9 some of the considerations of speculation, and
10 accused the United States of speculating. But the
11 irony is that defense counsel then turns around and
12 then begins speculating for their justification for
13 why a defendant would appear with tarps and plastic
14 to the scene of a homicide. So it's unknown what his
15 motives were for why he showed up. And was he called
16 while he was out of the house and told to come back
17 with tarps and plastic? Or was he aware of the plan
18 and did he show up? I think there is evidence that
19 points that he was aware of a plan to either injure
20 or murder Jessica Mora, and then he returned with the
21 tarps and the plastic. But a reading could be made,
22 like defense counsel, that he was called and
23 contacted. There is no evidence of that phone call
24 that's been presented. But there is evidence that he
25 was -- that he had some knowledge of what might have

1 been going on in the home, whether or not he was an
2 active participant in it.

3 Ultimately, Your Honor, this was a very
4 heinous homicide over \$400. Substance abuse seemed
5 to have played a large part in this, but ultimately,
6 no one deserves to die for \$400. The homicide itself
7 was a heinous act. And the things that they did to
8 her were awful. But the things that they did, that
9 Johnny Black participated in were equally as awful.
10 It's taken two and a half years, essentially, to find
11 the full remains of the body. And the defendant
12 participated in the dismemberment and burial.

13 MS. KATZE: Excuse me, Your Honor --

14 THE COURT: No, I'll let you -- I'll come
15 back to you.

16 MS. KATZE: Can I tell you my objection?

17 THE COURT: No, no, no. Sit down.

18 Mr. Marshall.

19 MR. MARSHALL: And that Johnny Black's
20 participation was equally heinous in the
21 dismemberment, the burning, and the burying of
22 Jessica Mora in an isolated area. These acts that he
23 participated in were egregious acts and deserve the
24 punishment fully under the sentencing range. And the
25 part that hasn't been fully discussed is that this is

1 only one of the two counts the defendant is facing.
2 Defendant is also facing the charges for the
3 discharge -- I'm sorry, brandishing a firearm during
4 a crime of violence. He committed two acts.
5 Independently, either one of those acts would justify
6 the sentence.

7 So, Your Honor, under the sentencing
8 agreement, we would ask you to sentence him to the
9 full maximum sentence of 171 months, to be followed
10 by 3 years of supervised release.

11 THE COURT: All right. Thank you, Mr.
12 Marshall.

13 Ms. Katze.

14 MS. KATZE: My objection, which is now
15 moot, was that I understood that you would allow Mr.
16 Marshall to respond to my closing remarks, but he was
17 then just going on to repeat his closing remarks,
18 which seemed a little unfair to me.

19 THE COURT: All right. Anything else, Mr.
20 Marshall?

21 MR. MARSHALL: No, Your Honor.

22 THE COURT: All right. I will now state
23 the sentence, but the attorneys will have a final
24 chance to make legal objections before sentence is
25 imposed.

1 The Court adopts the presentence report
2 factual findings. We've made some changes to those
3 this morning, particularly as related to the tattoos
4 on Mr. Black's neck, and some findings about his gang
5 affiliation that we're going to remove. So with
6 those changes, the Court will adopt those as its own.

7 The rest of it I have made rulings on as to
8 what's going to be left in, and not a great deal of
9 dispute about the accuracy of those findings, just
10 whether they're relevant and should be included. And
11 I made rulings on those.

12 The Court's also considered the Sentencing
13 Guideline applications. At this point, there not
14 being any dispute about those, the Court will adopt
15 those as its own as well.

16 The Court's also considered the factors set
17 forth in 18 USC 3553(a)(1) through (7), and I'll
18 discuss those in more detail in a moment.

19 As to -- and some of this is repeating what
20 I said at the beginning -- but as to Count 1, the
21 guideline sentence is the statutorily required
22 sentence of seven years, which will run consecutive
23 to any sentence imposed.

24 As to Count 2, the offense level is 27, and
25 the criminal history category is 5, establishing a

1 guideline imprisonment range of 120 to 150 months.
2 So that's the one that I have the ability to vary
3 from.

4 Therefore, the total guideline range is 205
5 to 234. However, under Rule 11(c)(1)(C) of the
6 Federal Rules of Criminal Procedure, the Court now
7 accepts the plea agreement which includes a specific
8 sentence of 154 to 171 months, as the Court is
9 satisfied that the agreed sentence is justified. And
10 in my remarks on where to sentence within that range
11 I'll make some indications as to why I think that the
12 plea agreement is appropriate.

13 The Court notes that the defendant
14 brandished a firearm at federal officer John Doe, and
15 assisted co-conspirators, or assisted these other
16 people -- I'll just say assisted other people to burn
17 and bury the body of Jane Doe after her murder.

18 The Court has, as I think this record will
19 reflect, carefully considered the guidelines. But in
20 arriving at its sentence, the Court has taken into
21 account not only the guidelines but other sentencing
22 goals. Specifically, the Court has considered the
23 guideline sentencing range established for the
24 applicable category of offense committed by the
25 applicable category of defendant. And as I've

1 indicated, I don't believe the punishment that's set
2 forth in the guidelines is appropriate for this sort
3 of offense. But I have continued to consider the
4 kind of sentence and range established by the
5 guidelines, because I do think it's a useful starting
6 point for the Court to make a determination where
7 within the range that the parties propose to sentence
8 Mr. Black.

9 I have identified -- and in a case like
10 this there is some of these overlap, some of them go
11 on both sides of the equation -- but I've identified
12 about 35 factors that I think put some downward
13 pressure on this sentence to take it not only out of
14 the guidelines, as the parties have done, and also
15 the Court has agreed to do as well, but also to try
16 to determine where within the proposed range the
17 sentence should be.

18 Let me first say that I think something
19 that puts downward pressure on it is the need to not
20 hold Mr. Black guilty, responsible for the murder.
21 He has made admissions for the crimes that he is
22 convicted of. He has -- and he's apologized, and
23 he's agreed to cooperate. And I think those things
24 should be taken into account. And the line should be
25 carefully demarcated in my assessment and calculus of

1 the 3553(a) factors that the murder largely should be
2 put aside for determining his sentence.

3 The assistance that he has provided is
4 important and puts downward pressure. His
5 acknowledgment of his role, and the fact that he
6 provided assistance to the location of the toolbox,
7 and helped the recovery and appropriate -- at an
8 appropriate location or approximate location of where
9 the body and remains were. That has allowed
10 officials to take the evidence and have it found and
11 analyzed. And that has aided in this matter. And I
12 hope it has provided some peace of mind to the family
13 to have the body or the remains back. I don't think
14 it was a good position for them to be wondering
15 whether she was still alive. And this will allow
16 what remains have been found for a proper funeral
17 service. And I know it's been a long time, but that
18 sort of thing can go a long way to helping bring some
19 closure. It may still yet to become fully closed for
20 the family, but it will go a long ways to helping do
21 that once they're able to have a service for their
22 loved one.

23 I think it's important, and I think it puts
24 downward pressure on the sentence to focus on the
25 fact that he only participated -- we only have

1 evidence that he participated after the murder act,
2 so that he is not part of the murder. And we don't
3 have any witnesses that said he was part of the
4 murder. So it's very careful to keep that
5 distinction between the murder and what happened to
6 the body afterwards, and focus on the defendant's
7 role.

8 I do think there are some things about Mr.
9 Black that supervised release from the federal
10 government and its resources could help him. So when
11 I -- my task as a district judge is not to just come
12 in here and come up with a reasonable sentence; it's
13 to come up with a sentence that accurately reflects
14 the 3553(a) factors. So the sentence should not be
15 any greater than is necessary to promote those
16 factors.

17 As to his background, I do think there are
18 some things, as Ms. Katze said that -- it was a bleak
19 background. And I will accept that there were few
20 opportunities in the community; that Mr. Black had a
21 learning disability; that there were few teachers up
22 there and resources to maybe deal with that. The
23 fact that he met his father, this biological father,
24 when he was in jail and they were there together, is
25 a very sad fact. And the fact that his mother died

1 in a park of exposure, that's a bad fact. And I
2 think his background does put downward pressure on
3 the sentence. Because I think supervised release
4 could maybe help him more than incarceration on some
5 of those things.

6 I think we're all in agreement the
7 methamphetamine and alcohol may have contributed in
8 some way to getting him to the point where he
9 contributed to the disposal of this body, and then
10 shooting from the car. I think his girlfriend, Ms.
11 Ramos' death, contributed to his attitude toward
12 police. So I do think some things like that could be
13 addressed in supervised release rather than
14 necessarily more incarceration. So I agree with
15 those. So I think there are a number of factors that
16 put downward pressure on the sentence.

17 I do think there are many factors -- I've
18 identified about 50 factors -- again, some of these
19 could probably go on both sides of the ledger, and
20 some of them could overlap. But I do want to start
21 with the seriousness of the offense. And again, I'm
22 focusing on the events that occurred after the
23 murder. Everything that occurred after the murder is
24 a very heinous act. I think we all agree that it was
25 a horrific murder. But we put that aside, I think,

1 largely for determining Mr. Black's role. But
2 everything after the murder was still egregious. And
3 then the fact that we have a discharge -- shooting
4 the firearm, it contributes to a very horrific
5 situation, and then also a very dangerous set of
6 circumstances.

7 We're a long time down the road from the
8 dismembering of the victim here. So the sentence has
9 to promote respect for the law and provide just
10 punishment. I do think that I can infer that Mr.
11 Black was aware of what was going on after the
12 murder -- not that he was aware before -- by the fact
13 that he showed up with tarps and plastic, and arrived
14 with those, whatever brought him to bring those. He
15 then began to collect her remains and eventually
16 helped dispose of those. And while he was helpful in
17 their recovery, nonetheless, it appears he was an
18 essential part of the group or the actions that were
19 taken to dispose of her body by putting her remains
20 in a toolbox. So he's not a minor player in what
21 occurred after the murder. But he was a consensual
22 person in the coverup.

23 So the sentence has to afford adequate
24 deterrence both at a specific and general level.
25 Shooting a firearm. You've got to protect the

1 public. A guideline sentence would avoid unwarranted
2 sentencing disparity among similar defendants with
3 similar criminal records. And again, for a district
4 judge, a reasonable sentence is one that is
5 sufficient without being greater than is necessary to
6 promote those factors. So it has to be sufficient
7 here.

8 I accept that his losing Ms. Ramos, and her
9 being killed, he was upset with the police officers.
10 But we just can't have that conduct in the community
11 that endangered people in Espanola. It was multiple
12 dangerous situation. So that's a very heinous act,
13 very dangerous act. And there seems to be multiple
14 firearms and you're not supposed to have any
15 firearms. So he's arrested with firearms. So we
16 have multiple firearms, with the addiction to drugs
17 and methamphetamine. I think that just creates a
18 real risk for the community.

19 Focusing on the victim herself and then
20 what Mr. Black did with her, he made a mistake. And
21 it's his own words he calls it "irresponsible." And
22 you take his statement in the plea colloquy where he
23 identified -- and then the corroborating evidence of
24 identifying the burn stains, the fabric, the bones,
25 the jewelry, I think we're pretty certain that this

1 is the victim.

2 So I think taking all the evidence
3 together, the language in the plea agreement, I think
4 those are horrendous acts. And I think that I can
5 consider everything that's in the PSR, that I've left
6 in the PSR, is relevant conduct and background. And
7 I have a high degree of confidence that we have a
8 good picture of what Mr. Black did. And we'll
9 probably know not everything, and we don't need to
10 know everything, but we probably have a pretty
11 complete and accurate picture. But I think the
12 factors that put upward pressure on this overwhelm
13 the factors that put downward pressure.

14 I will accept the plea agreement, because I
15 think that there are a number of reasons why -- and
16 y'all told me why y'all have agreed to the sentence
17 you have. But probably left alone I wouldn't have
18 varied from the guideline range in Mr. Black's case.
19 So I think something at the high end of the range
20 that you have agreed to is appropriate here.

21 Therefore, the Court concludes that a
22 sentence of 171 months is necessary, but also
23 adequate to reflect seriousness of the offenses,
24 promote respect for the law, provide just punishment,
25 afford adequate deterrence both at a specific and

1 general level, protect the public. It is a
2 considerable variance from even the bottom of the
3 guideline range, but I think we have worked hard to
4 justify that. And so I think that it avoids -- I
5 think both the Government, the defense, Probation,
6 and the Court have worked hard to justify the
7 variance -- so I think it avoids unwarranted
8 sentencing disparities among defendants with similar
9 records who have been found guilty of similar
10 conduct.

11 And because I will be placing the defendant
12 on supervised release, I think it will effectively
13 provide the defendant with some needed education and
14 training and care to try to assist him with some of
15 the problems that have brought him to this point.

16 In sum, I think the high end of the
17 proposed range is -- fully and adequately represents
18 and reflects each of the factors embodied in 18 USC
19 Section 3553(a). I think the parties have proposed
20 with that top of the range a reasonable sentence.
21 And by that one that I think is sufficient without
22 being greater than is necessary to comply with the
23 purposes of punishment set forth in the Sentencing
24 Reform Act.

25 Therefore, as to Count 1 of information 1:

1 20-CR-00639 JB, the Defendant Johnny Black is
2 committed to the custody of the Bureau of Prisons for
3 a term of 84 months.

4 As to Count 2, the defendant is committed
5 to the custody of Bureau of Prisons for a term of 87
6 months. Said terms shall run consecutively for a
7 total term of 171 months.

8 The Court recommends the defendant
9 participate in the Bureau of Prisons 500-hour drug
10 and alcohol treatment program.

11 As to Count 1 the defendant is placed on
12 supervised release for a term of 3 years. As to
13 Count 2, the defendant is placed on supervised
14 release for a term of 3 years. Said terms will run
15 concurrently for a total term of 3 years.

16 The defendant must comply with the
17 mandatory and standard conditions of supervision.
18 The following special conditions will also be
19 imposed. I'm now going to state, I think it's seven
20 conditions, and these all relate to substance abuse.
21 So let me address those first, and then I'll give the
22 justification for all seven after I have stated them.

23 First, you must participate in an
24 outpatient substance abuse treatment program, and
25 follow the rules and regulations of that program.

1 The probation officer will supervise your
2 participation in the program, provider, location,
3 modality, duration, intensity, et cetera. You may be
4 required to pay all or a portion of the cost of the
5 program.

6 Second, you shall waive your right of
7 confidentiality and allow the treatment provider to
8 release treatment records to the probation officer,
9 and sign all necessary releases to enable the
10 probation officer to monitor your progress. The
11 probation officer may disclose the presentence
12 report, any previous substance abuse evaluations
13 and/or other pertinent treatment records to the
14 treatment provider.

15 Third, you must submit to substance abuse
16 testing to determine if you have used a prohibited
17 substance. Testing may include urine testing, the
18 wearing of a sweat patch, a remote alcohol testing
19 system, an alcohol monitoring technology program,
20 and/or any form of prohibited substance screening or
21 testing. You must not attempt to obstruct or tamper
22 with the testing methods. You may be required to pay
23 all or a portion of the cost of the testing.

24 Fourth, you must submit to search your
25 person, property, residence, vehicle, papers,

1 computers, as defined in 18 USC Section 1030(3)(1),
2 other electronic communications, or data storage
3 devices or media or office under your control. The
4 probation officer may conduct a search under this
5 condition only when reasonable suspicion exists, in a
6 reasonable manner at a reasonable time for the
7 purpose of detecting illegal substances, alcohol,
8 weapons, and other contraband. You must inform any
9 residents or occupants that the premises may be
10 subject to a search.

11 Fifth, you must not use or possess alcohol.

12 Sixth, you must not knowingly purchase,
13 possess, distribute, administer, or otherwise use any
14 psychoactive substances; e.g., synthetic
15 cannabinoids, synthetic cathinones, et cetera, that
16 impair your physical or mental functioning whether or
17 not intended for human consumption.

18 Seventh, you must not possess, sell, offer
19 for sale, transport, cause to be transported, cause
20 to affect interstate commerce, import or export any
21 drug paraphernalia, as defined in 21 USC Section
22 863(d).

23 These seven conditions are imposed because
24 of the defendant's history of substance abuse and his
25 history of violence with weapons.

1 I'm now going to state three more
2 conditions, and then I'll give the justification for
3 these three when we're done. And these all relate to
4 trying to help Mr. Black reintegrate into the
5 community after he has served his prison sentence.

6 First, you must not communicate or
7 otherwise interact with co-defendants,
8 co-conspirators without prior approval of the
9 probation officer.

10 Second, you must not communicate or
11 otherwise interact with any known gang member without
12 prior approval of the probation officer.

13 And third, you must reside in a residential
14 reentry center for a term of 180 days. You must
15 follow the rules and regulations of the center.

16 These three conditions are imposed to
17 assist the defendant with successful reintegration
18 into the community, to provide connections for
19 prosocial resources, to decrease negative
20 associations. And I'm going to talk about a fine.
21 I'm not going to impose a fine, but in lieu of a fine
22 in a moment.

23 And then, finally, you must not communicate
24 or otherwise interact with the victim or victims
25 either directly or through someone else without prior

1 approval of the probation officer. And this
2 condition is imposed to protect the victims from
3 unwanted contact or further harm.

4 The Court finds the Mandatory Restitution
5 Act of 1996 is applicable in this case. The Court
6 intends to order restitution. However, restitution
7 has not yet been determined. Therefore, the Court
8 will establish a restitution amount and schedule it
9 at a later date. And maybe before we get done with
10 the hearing, Ms. Wright could tell us what that date
11 will be so we have a target to work for.

12 Let me go back to the fine. Based on the
13 defendant's lack of financial resources, the Court
14 will not impose a fine or a portion of a fine. Also,
15 if there is any money available, I'd like for it to
16 go to the victims, if we determine that restitution
17 is appropriate.

18 However, in accordance with USSG Section
19 5E1.2(e), the Court has imposed as a special
20 condition that the defendant reside at a residential
21 reentry center.

22 The Court also considered alternative
23 sanctions, such as community service, location
24 monitoring, or a halfway house in lieu of all or a
25 portion of a fine and concludes the total combined

1 sanction without a fine or alternative other than the
2 halfway house, the reentry center is sufficiently
3 punitive.

4 Consistent with a stipulation in the plea
5 agreement, the defendant forfeits his rights, title,
6 and interests to the items outlined in paragraph
7 19 -- is that 19 of the PSR or the plea agreement?
8 It's the plea agreement, isn't it?

9 The defendant shall pay a special
10 assessment of \$100 as to each count of conviction for
11 a total of \$200, which is due immediately.

12 Let me ask both counsel if they know of any
13 reason why the sentence should not be imposed as the
14 Court has stated it other than what may have already
15 been argued to the Court? Mr. Marshall?

16 MR. MARSHALL: No, Your Honor.

17 THE COURT: Ms. Katze?

18 MS. KATZE: No, Your Honor.

19 THE COURT: It is ordered that the sentence
20 is imposed as the Court has stated it.

21 Mr. Black, you can appeal your conviction
22 if you believe that your guilty plea was somehow
23 unlawful or involuntary, or if there is some other
24 fundamental defect in the proceedings that was not
25 waived by your guilty plea. You also have a

1 statutory right to appeal your sentence under certain
2 circumstances, particularly if you think the sentence
3 is contrary to law. However, a defendant may waive
4 those rights as part of a plea agreement, and you
5 have entered into a plea agreement which waives some
6 or all of your rights to appeal the convictions and
7 any sentence imposed in conformity with the Rule
8 11(c)(1)(C) plea agreement, which this one was, so
9 you've effectively waived the right to appeal the
10 sentence itself. Such waivers are generally
11 enforceable, but if you believe for any reason that
12 your waiver is unenforceable, you can present that
13 theory to the appellate court.

14 You have the right to apply for leave to
15 appeal in forma pauperis. And what that means is the
16 Clerk of the Court will prepare and file a notice of
17 appeal upon your request, if you're unable to pay the
18 cost of an appeal. With very few exceptions any
19 notice of appeal must be filed within 14 days of the
20 entry of the judgment.

21 Mr. Black, understanding that pursuant to
22 the plea agreement, you have waived the right to
23 appeal the convictions and any sentence imposed in
24 conformity with the Rule 11 (c)(1)(C) plea agreement,
25 which this one was, so you've effectively waived the

1 right to appeal the final sentence imposed by this
2 Court under 18 Section 3742(a), do you understand
3 generally your rights to appeal?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. Counsel, you have
6 copies of the two presentence reports and the two
7 addendum.

8 I guess we need to have a motion to dismiss
9 the remaining counts of the indictment. Do you have
10 that motion, Mr. Marshall?

11 MR. MARSHALL: Your Honor, I do not have it
12 with me. I will get that to the Court shortly.

13 THE COURT: I assume there is no objection
14 to that, Ms. Katze?

15 MS. KATZE: No objection.

16 THE COURT: All right. Anything else we
17 need to discuss while we're together? Anything else
18 I can do for you, Mr. Marshall?

19 MR. MARSHALL: Just one quick question,
20 does the Court need an order regarding the
21 forfeiture, or does the sentencing, does that take
22 care of the forfeiture of the handgun and the
23 ammunition? If the Court would like me to prepare an
24 order --

25 THE COURT: Normally when I say it in the

1 sentence, that's what we're talking about paragraph
2 19, right, in the plea agreement?

3 MR. MARSHALL: Yes, Your Honor.

4 PROBATION OFFICER: Yes, Your Honor. I
5 have one more thing, Your Honor, if I may. I believe
6 when you said the total guideline range, you said
7 205. It should be 204, just to verify that issues.

8 THE COURT: Yeah, I said it a few times.
9 But I meant to say 204. If I said 205 here, it is
10 204.

11 Do you have anything else, Mr. Marshall?

12 MR. MARSHALL: No, Your Honor.

13 THE COURT: This is how I normally do it.
14 If y'all want something else, if it's all right with
15 Ms. Katze, you can run it past here, normally, I just
16 acknowledge what y'all agree to in the stipulation,
17 that's usually enough. But if you need something
18 else, run it by Ms. Katze.

19 Anything else, Mr. Marshall?

20 MR. MARSHALL: No, Your Honor. Thank you.

21 THE COURT: How about you, Ms. Katze?

22 MS. KATZE: No, Your Honor.

23 THE COURT: Counsel, I appreciate your
24 assistance on this matter.

25 Mr. Black, good luck to you. It's a long

1 sentence, and you knew before you came in here it was
2 going to be long regardless of where we came out in
3 the range. But you're still a young enough man to
4 make a lot of yourself. So try to use this time to
5 get some drug issues taken care of.

6 THE DEFENDANT: I will, Your Honor.

7 THE COURT: You've got some things in the
8 past. So work on it. Because you can still make
9 something of yourself. And so try to use the
10 resources of the federal government to try to help
11 you with some of those problems, okay?

12 THE DEFENDANT: I will.

13 THE COURT: And to the families, the
14 victim's family, good luck to you. I know that there
15 may be some more things that are going to occur in
16 future cases and stuff like that, that doesn't bring
17 complete closure here. But I hope this helps. And
18 maybe down the road, there can even be some
19 forgiveness and things like that. It may be a little
20 early for that. But I wish the family as well -- I
21 wish them well also.

22 All right. Y'all everybody be safe out
23 there. Okay. Y'all have a good afternoon, good
24 weekend.

25 (The Court stood in recess.)

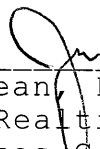
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UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
Official Court Reporter for the State of New Mexico,
do hereby certify that the foregoing pages constitute
a true transcript of proceedings had before the said
Court, held in the District of New Mexico, in the
matter therein stated.

In testimony whereof, I have hereunto set my
hand on March 17, 2021.


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